Local 32, International Longshoremen's and Warehousemen's Union *and* Weyerhaeuser Company and Association of Western Pulp and Paper Workers, Local 10. Case 19-CD-377

31 July 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 30 July 1982 Administrative Law Judge James S. Jenson issued the attached decision. The Respondent filed exceptions and a supporting brief and a Motion For a Stay of Proceedings.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

We deny the Respondent's Motion for a Stay of Proceedings. In its motion, the Respondent argues that the Supreme Court's decision in *Bill Johnson's Restaurants v. NLRB*, 103 S.Ct. 2161 (1983), compels the Board to stay the instant proceedings until such time as the courts resolve the Respondent's Section 301 suit seeking "time-in-lieu" payments pursuant to an arbitration award favorable to the Respondent. We disagree.

As the judge found, the Respondent's actions constitute both an unlawful effort to undermine the Board's 10(k) award,[1] which was contrary to the Respondent's interests, as well as prohibited economic coercion of Jones-Washington Stevedoring Company and the Pacific Maritime Association with an object of forcing Weyerhaeuser to assign the disputed work to its members. See *Teamsters Local 85 (PMA)*, 224 NLRB 801 (1976). It is also well established that the Board's 10(k) awards take precedence over any and all contrary arbitration awards. *Carey v. Westinghouse*, 375 U.S. 261 (1964). Accordingly, we find that the Respondent's Section 301 action, which seeks to enforce an arbitration award contrary to the Board's 10(k) award and also seeks to achieve a prohibited objective, lacks a reasonable basis in fact and law. Therefore, the Court's decision in *Bill Johnson's* does not require a stay of proceedings.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 32, International Longshoremen's and Warehousemen's Union, Everett, Washington, its officers, agents, and representatives, shall take the action set forth in the Order.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge. This case was heard in Seattle, Washington, on January 19, 1982. The complaint, which was amended on December 7, 1981,[1] and at the hearing, issued on October 26 pursuant to a charge filed on December 29, 1980.[2] The complaint, as amended, alleges, in substance, noncompliance with the Board's 10(k) award by attempting to enforce "time-in-lieu" claims for work being performed in compliance with said award. Respondent denies it has engaged in conduct in contravention of the Board's 10(k) determination. All parties were afforded full opportunity to appear, to introduce evidence, and to examine and cross-examine witnesses. Briefs were filed by the General Counsel, Respondent, and the Charging Party, all of which have been carefully considered.

On the entire record in the case, including the demeanor of the witnesses, and having considered the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is admitted and found that Weyerhaeuser Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

It is admitted and found that Local 32, International Longshoremen's and Warehousemen's Union, Respondent, and the Association of Western Pulp and Paper Workers, Local 10, are each labor organizations within the meaning of Section 2(5) of the Act.

III. ISSUE

Whether, by seeking to enforce "time-in-lieu" claims provided for in its collective-bargaining agreement with Jones-Washington Stevedoring Company, Respondent has failed to comply with the Board's 10(k) determination in 256 NLRB 167.

[1] 256 NLRB 167 (1981).

[1] All dates are in 1981 unless stated otherwise.

[2] The charge was initially dismissed on June 19, 1981, following the Board's Decision and Determination of Dispute which issued on May 27 (256 NLRB 167) and Respondent's notice to the Acting Regional Director that it intended to comply therewith. On October 23, the dismissal was revoked in accordance with the Region's determination that Respondent had engaged in conduct inconsistent with its notice of intent to comply.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The 10(k) Determination*

Weyerhaeuser, an integrated forest products company, owns and operates several private docks used to transport its own and other manufacturers' products. This matter involves its dock located at Everett, Washington. The Everett dock has been in existence since 1902. From 1936 until 1975, Weyerhaeuser operated the Sulphite Mill adjacent to the Everett dock. In 1975, it ceased operation of the Sulphite Mill and commenced operation of the Thermo-Mechanical Mill, herein TM Mill, also located adjacent to the Everett dock. In addition to goods produced at the TM Mill and a nearby mill, since at least 1977, the goods exported across the Everett dock have included pulp from Kamloops, British Columbia; pulp from Casmopolis, Washington; lumber from its mills "E" and "B"; and plywood from its Snoqualmie, Washington mill. The foregoing goods are transported by truck to the Everett dock where they are unloaded and "high-piled" in warehouses adjacent to the dock. When a ship arrives at the Everett dock, employees of Weyerhaeuser tie the ship to the dock, prepare the goods in the warehouse for loading in accordance with a "plan," and transport it onto the dock to shipside by forklift operators. Employees involved in ship tieup and bringing goods from the warehouse to shipside (as well as casting off the ship's tieup lines) are Weyerhaeuser's employees represented by Association of Western Pulp and Paper Workers, herein called AWPPW. Once the goods have been placed at shipside, the cargo is hooked to the ship's gear and lifted by crane into the hold of the ship by employees of Jones-Washington Stevedoring Company, herein called Jones, who are represented by Respondent. Jones maintains a contract with Weyerhaeuser by which Jones is paid its incurred expenses, including wages and other compensation of its employees, as well as a "management fee" calculated on a "cost-plus" basis. Jones is a member of the Pacific Maritime Association, herein called PMA, an employer association comprised of various stevedoring and shipping companies. PMA and Respondent are parties to a collective-bargaining agreement entitled "Pacific Coast Longshore Contract Document," herein called PCLCD, which establishes, inter alia, wage and other compensation levels for employees of PMA member employers, including Jones. These wage and compensation levels are paid to Jones by Weyerhaeuser as part of their cost-plus contract arrangement. Weyerhaeuser is not a member of PMA and is not a signatory to the PCLCD. Thus, at all relevant times, work at the Everett dock was performed as follows: the tying up and casting off of ships at the dock, and the work of moving goods from the warehouse to shipside was performed by employees of Weyerhaeuser represented by AWPPW.

In the latter part of 1980, Weyerhaeuser decided to close the TM Mill located adjacent to the Everett dock, thereby eliminating manufacturing work at that facility. It was determined, however, that cargo dock work at the Everett dock would continue as before. Accordingly, about December 12, 1980, the TM Mill ceased manufacturing operations. The dock operations continued unabated as stockpiled goods from the TM Mill and goods from other facilities continued to be exported across the Everett dock. Work at the dock continued in the same manner as before the TM Mill closing, with employees of Weyerhaeuser represented by AWPPW continuing to tie up and cast off vessels and move goods from their last place of rest to shipside with the use of forklifts. Jones' employees represented by Respondent continued to move goods from shipside onto the vessel.

On December 21, 1980, employees represented by Respondent engaged in a 45-minute work stoppage at the Everett dock to protest Weyerhaeuser's assignment of the work in dispute—the handling of cargo from the warehouse or last point of rest to shipside, and the tying and untying of lines of vessels docked at the Everett dock—to employees represented by AWPPW, rather than to employees represented by Respondent. An area arbitrator under the grievance-arbitration provisions in the PCLCD was present. He referred the dispute to the Joint Coast Labor Relations Committee, which failed to reach agreement. On April 2, 1981, a hearing was held before Coast Arbitrator Sam Kagel, whose decision under the PCLCD is "final and conclusive." As noted heretofore, Weyerhaeuser is not a party to such agreement.

On December 29, 1980, Weyerhaeuser filed the instant charge. A Section 10(k) hearing was held on January 19, 1981, and on May 27, 1981, the Board issued a Decision and Determination of Dispute,[3] wherein it determined that employees of Weyerhaeuser, who are represented by AWPPW, are entitled to perform the work of the handling of cargo from the warehouse or last point of rest to shipside and the tying up and casting off lines of vessels at Weyerhaeuser's dock at Everett, Washington. The Board also determined that Respondent was not entitled by means proscribed by Section 8(b)(4)(D) to force or require Weyerhaeuser to assign the disputed work to employees represented by that labor organization.

By telegram dated June 8, 1981, Respondent's attorney advised the Board's Regional Office that Respondent intended to comply with the Board's Decision and Determination of Dispute. In reliance on this representation, the charge was dismissed on June 19, 1981.

B. *The Arbitration Award*

On September 16, 1981, Coast Arbitrator Kagel issued his Opinion and Decision (which is final and binding as between Respondent and PMA) that Respondent's claim that the work in dispute should have been assigned to Respondent's members and that Respondent's claim for "time-in-lieu" payments under the PCLCD was sustained. Kagel found that the controlling factor was the fact that when the TM Mill ceased operations the TM Dock was no longer an "industrial dock" as defined in the PCLCD; that it "in effect, became a commercial dock although privately owned, and that other exceptions under the PCLCD" were not applicable.[4]

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[3] 256 NLRB 167.

[4] Weyerhaeuser was not a party to the arbitration.

On October 9, 1981, two of Respondent's representatives on the Joint Labor Relations Committee talked to Kenneth Engleson, Jones' manager at the Port of Everett, whose office is located across the street from the Union's dispatch hall. According to Engleson, he was asked "whether we were going to order labor for the dock and whether we were going to abide by the Kagel award." Engleson responded that "we were going to order labor as directed by Weyerhaeuser and that was the only way we could go under the circumstances." According to Engleson, one of the men replied, "I don't know what's going to happen."[5] Paragraph 9 of the complaint alleges Respondent advised "that there would be problems" if Jones did not abide by the Kagel decision. Acknowledging that "this type of remark is not an out and out threat of a job action," the General Counsel contends "The remark could have been reasonably interpreted as indicating the possibility of trouble, i.e., work stoppages, if the appropriate labor was not ordered." Engleson testified that the *Mossman Star* was diverted from Everett to Vancouver, and then changed back, but that he did not recall why. Thus, there is no evidence to show the diversion to Vancouver was related to any remarks made by Repsondent's representatives. I do not agree that the remark made to Engleson can reasonably be interpreted as the General Counsel contends and I recommend dismissal of paragraph 9.

The following day, October 10, a special meeting of the Labor Relations Committee was held in the Jones offices. Representatives of Jones, the PMA, and Respondent attended. One of Respondent's business agents asked a Jones official if that company was going to abide by the ruling set forth in the Kagel award. According to Engleson, his immediate superior Dan Harlan responded that "at that particular time there had been a ruling by the National Labor Relations Board awarding the work to Weyerhaeuser employees. He was well aware of the Kagel award and so he was right in between knowing full well that we had to take our instructions from Weyerhaeuser and we couldn't very well move either one way or the other without violating existing situations." According to Engleson, Respondent's representatives contended that Jones "should be abiding by the Kagel award and wanted to know if we would accept in-lieu-of claims as given to us by the Union." Harlan responded that the in-lieu-of claims would be accepted, but that such acceptance did not necessarily mean that Respondent or the individuals listed in the in-lieu-of-claims were going to be paid. Assurance was given by Respondent that "there would be no job action, no slowdown, no strikes" if the *Mossman Star* was loaded.

On October 14, 1981, Respondent's attorney wrote the Acting Regional Director as follows:

> Dear Mr. Nelson:
>
> In response to Dean Peterson's letter to you dated October 2, 1981, please be advised that Local 32 intends to take all appropriate legal action to enforce the right of its members to time in lieu payments pursuant to the final and binding arbitration award issued by Arbitrator Sam Kagel on September 16, 1981. Such payments will not affect Weyerhaeuser or any rights it may have under the Section 10(k) award in the above case. No work stoppage or other interference with Weyerhaeuser's operations is contemplated.
>
> Yours very truly,
> LAW OFFICES OF NORMAN LEONARD
> /s/ William H. Carder

By letter dated October 23, 1981, the Acting Regional Director advised all interested parties that Respondent had engaged in conduct inconsistent with its original notice of intent to comply with the Board's 10(k) determination, that he was revoking his dismissal of the matter, and that he was reopening the case for further proceedings, including the issuance of a complaint. The instant complaint was issued on October 29, 1981. Respondent has submitted a number of time-in-lieu claims against Jones, none of which have been paid. Respondent has filed a civil action in the United States District Court pursuant to Section 9 of the Federal Arbitration Act and Section 301 of the Act wherein it seeks to confirm and enforce the Kagel arbitration award and require PMA to pay Respondent damages for breach of the collective-bargaining agreement in an amount equal to the in-lieu-of payments referred to in the arbitration award.

Discussion

The General Counsel contends that by filing the "in-lieu-of" claims and by attempting enforcement of the Kagel arbitration award, Respondent has failed to comply with the Board's 10(k) determination and has engaged in prohibitive economic coercion of Jones and PMA with an object of forcing or requiring Weyerhaeuser to assign the disputed work to its members, rather than to employees who are members of AWPPW.

Respondent argues that it has not made any demands on Weyerhaeuser with respect to the assignment of the work in question and has totally refrained from engaging in any threatening or coercive conduct in contravention of the Board's 10(k) determination. To the contrary, it argues it has engaged only in "appropriate legal action" to enforce the provisions of the PCLCD as between itself and PMA and its member-employers, including Jones. It is further argued that it has not disrupted or interfered with the normal business operations of any employer, nor sought the aid of other unions. Rather, Respondent pointed out it has repeatedly given assurances that it did not contemplate such action. It argues that where a union resorts only to its contractual grievance machinery and thereafter files a lawsuit to enforce a collective-bargaining agreement, the union does not engage in "coercive" conduct in violation of Section 8(b)(4)(B).

I think it useful here to determine first the question of whether Respondent's action had as an object the forcing or requiring of Weyerhaeuser to assign the disputed work to its members rather than to employee-members of AWPPW. To find the underlying object of an activi-

[5] The vessel *Mossman Star* was scheduled to dock at the Weyerhaeuser facility the following day.

ty, one must look to the full context of circumstances in which it occurred.

In the 10(k) hearing, "the parties stipulated that on December 21, 1980, employees represented by ILWU [Respondent herein] engaged in a work stoppage for the purpose of forcing or requiring the employer [Weyerhaeuser] to assign particular work to employees represented [by] ILWU rather than to employees represented by AWPPW."[6] It is further clear that the issue presented to Coast Arbitrator Kagel was bottomed on Respondent's claim that the same work in dispute should be performed by its members rather than by Weyerhaeuser's employees who were represented by AWPPW.[7] It further appears that the contentions made by Respondent before Kagel were considered by the Board in the 10(k) proceeding. Respondent's director of benefits John Waddell testified in the instant hearing that while Respondent has not engaged in any work stoppages, picketing, or other type job action since December 21, 1980, Respondent has "worked through the Coast lawyer to try to obtain the work." Business Agent Hudson admitted herein that one of the reasons Jones had been asked to live up to the Kagel award was because Respondent wanted the work in dispute.[8] Thus, Respondent's claim that it does not seek assignment of the work covered by the 10(k) award has a hollow ring. There can be no doubt that the original work stoppage occurred because Respondent sought the work in dispute and that it continues to seek assignment of the disputed work to it, contrary to the Board's Decision and Determination of Dispute, through the imposition of a wage liability for unperformed work. It seems apparent then that Respondent's resort to the arbitration mechanism, and the enforcement of the Kagel decision through the district court, is but a continuation of its jurisdictional claim to the work to which the Board has found it is not entitled. In that respect, it has not complied with the Board's Decision and Determination of Dispute. The fact Respondent has sought to rest its claim on an arbitractor's award or on its agreement with PMA does not detract from the continuing jurisdictional nature of the dispute.

Section 8(b)(4)(ii)(D) makes it an unfair labor practice for a union "to threaten, coerce, or restrain any person engaged in commerce" where an object is "forcing or requiring any employer to assign particular work to employees in a particular labor organization . . . rather than to employees in another labor organization . . . ." Respondent claims it has totally refrained from any threatening or coercive conduct in contravention of the 10(k) determination. Respondent also argues that its conduct in proceeding to binding arbitration, and initiating the lawsuit to enforce its collective-bargaining agreement with PMA cannot amount to a violation of Section 8(b)(4)(D) because it "'totally refrained from engaging in any nonjudicial acts of self help,' and had only 'follow[ed] the procedures set forth in its contract.'"

The General Counsel argues, in effect, that since Jones, a neutral to the jurisdictional dispute, does not have the power to assign the disputed work, the foreseeable consequences of pressing the "in-lieu-of" claims is to apply economic pressure on Jones so that Jones will force or require Weyerhaeuser to assign the disputed work to Respondent's members.

It is implicit that if Jones is compelled to pay wages for work not performed, it will suffer economically, and the incentive will be to either cease doing business with Weyerhaeuser or to force or require Weyerhaeuser to reassign the disputed work to Respondent's members. Respondent has at all times known that Jones had no control over the disputed work, and its representatives admitted in the instant proceeding that the reason it sought to enforce the Kagel award was because Respondent wanted the work in dispute assigned to it.[9] Therefore, it seems clear that enforcement of the Kagel award has been used as an economic device against PMA and its members, including Jones, so that they will either cease doing business with Weyerhaeuser or force or require Weyerhaeuser to reassign the disputed work to Respondent's members as the condition for avoiding the continuing imposition of a wage liability for unperformed work.[10] In these circumstances, I conclude and find that Respondent's use of the Kagel award in connection with its claim for "in-lieu-of" payments amounted to prohibited economic coercion.

In *Broadcast Employees NABET (Metromedia, Inc.)*, 255 NLRB 372 (1981), cited by Respondent, the Board was presented with the issue of whether NABET's filing of grievances and of a Section 301 suit to compel arbitration demonstrated a refusal to abide by the Board's prior 10(k) award and constituted restraint or coercion within the meaning of Section 8(b)(4)(ii)(D) of the Act. Contrary to me, the Board found no violation. In so deciding, the Board pointed out that its earlier 10(k) award was ambiguous and led to conflicting interpretations by the parties. The Board went on to state (255 NLRB at 373):

> Our concern here is the object of Respondent's conduct in filing the grievances and the Section 301 lawsuit, and for that purpose it is sufficient that the interpretation of the 10(k) award was open to reasonable doubt by the parties affected by it, because of its ambiguity and because of changed circumstances resulting from the passage of time.
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> In addition, we find it relevant that Respondent filed the grievances relating to live broadcasting under a contract executed almost 2 years after the 10(k) award, that Respondent's grievances are colorable under the contract, and that the contract itself does not, in our judgment, represent an attempt by either Respondent or the Employer to cir-

[6] 256 NLRB 167 and 169.

[7] See Opinion and Decision of Coast Arbitrator Kagel attached hereto as Appendix A.

[8] See Tr. 75 and 77.

[9] Hudson admitted this to be the object of Respondent's action.

[10] A cease-doing-business object may be cognizable under both Sec. 8(b)(4)(D) as well as Sec. 8(b)(4)(B). *Plumbers Local 5 (Arthur Venneri Co.) v. NLRB*, 321 F.2d 366, 371 (D.C. Cir. 1962), cert. denied 375 U.S. 921 (1962).

cumvent the 10(k) award to the detriment of employees represented by IATSE.

The Board concluded that since its 10(k) determination did not clearly address the work in dispute in that case a subsequently negotiated contract provided a "colorable basis" for the grievances and also appeared to accommodate the prior award assignment of the work to the other union. It has not been claimed in the present case that there was any ambiguity in the 10(k) award, and the testimony clearly shows that Respondent's object in enforcing the Kagel award was to obtain the work assigned to AWPPW in the 10(k) award. In these circumstances, I conclude that Respondent does not have a "colorable basis" for its claim based on the Kagel award.

Section 10(k) notes only one instance in which the Board is directed to defer to an arbitrator's award: When the Board has satisfactory evidence that the parties have adjusted or agreed on methods for the voluntary adjustment of the dispute. The proceedings before Kagel did not include either AWPPW or Weyerhaeuser. Thus, there was no agreement for the voluntary adjustment of the dispute, and the Board properly proceeded to make the determination. As stated by the Sixth Circuit Court of Appeals in *Auto Workers Local 1519 v. Rockwell International Corp.*, 619 F.2d 580, 583–584 (1980):

> Once the NLRB decides a work assignment dispute, its determination takes precedence over a contrary arbitrator's award. *Carey v. Westinghouse Corp.*, 375 U.S. 261, 84 S.Ct. 401, 11 L.Ed.2d 320 (1964); *NLRB v. Radio & Television Broadcast Engineers*, supra; *New Orleans Typographical Union No. 17 v. NLRB*, 368 F.2d 755 (5th Cir. 1966). This is true regardless of which action was initiated first. *Dock Loaders and Unloaders, ILA Local No. 854 v. Richeson & Sons, Inc.*, 280 F.Supp. 402 (E.D.La. 1968). In *Carey*, the Court specifically noted that where a NLRB determination and an arbitrator's award conflict, the former's ruling would take precedence. Further, "[t]he superior authority of the Board may be invoked at any time." 375 U.S. at 272, 84 S.Ct. at 409. Accord, *New Orleans Typographical, supra.*
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> . . . .
>
> Both the legislative history of the LMRA and the case law on this issue support a finding that a NLRB § 10(k) determination is to take priority over a contrary arbitrator's award in the dispute.

The court went on to hold that when an employer has been acting in accord with a 10(k) ruling, "it is not liable for damages to the disappointed union."

On the foregoing, I conclude and find that by filing "in-lieu-of" claims and attempting to enforce the Kagel arbitration award, thereby undermining the Board's authority to resolve jurisdictional disputes, Respondent has failed to comply with the Board's 10(k) Decision and Determination of Dispute and has engaged in prohibited economic coercion of Jones and PMA with an object of forcing or requiring Weyerhaeuser to assign the disputed work to its members rather than to employees who are members of AWPPW. Such conduct violates Section 8(b)(4) (ii)(D) of the Act, substantially as alleged in paragraphs 10 and 11 of the complaint as amended. See, for example, *Teamsters Local 85 (PMA)*, 224 NLRB 801 (1976).

CONCLUSIONS OF LAW

1. Respondent Local 32, International Longshoremen's and Warehousemen's Union and Association of Western Pulp and Paper Workers, Local 10, are labor organizations within the meaning of Section 2(5) of the Act.

2. Weyerhaeuser Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondent has engaged in unfair labor practices proscribed by Section 8(b)(4) (ii)(D) of the Act by failing and refusing to honor and comply with the Board's Decision and Determination of Dispute reported in 256 NLRB 167 by filing "time-in-lieu" claims for work performed by members of AWPPW and by maintaining a lawsuit in the United States District Court praying for an order confirming and enforcing the award of Coast Arbitrator Sam Kagel and requiring Pacific Maritime Association and its employer-members to pay money damages equal to "time-in-lieu" payments pursuant to the arbitration award, with an object of forcing or requiring Weyerhaeuser Company to assign the work described below to employees represented by Respondent rather than to employees represented by AWPPW.

The work consists of:

> The handling of cargo from the warehouse or last point of rest to shipside and the tying up and casting off lines of vessels at Weyerhaeuser Company's dock in Everett, Washington.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices proscribed by Section 8(b)(4) (ii)(D) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Local 32, International Longshoremen's and Warehousemen's Union, Everett, Washington, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to honor and comply with the Board's Decision and Determination of Dispute reported

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

in 256 NLRB 167, by filing "time-in-lieu" claims for work performed by members of Association of Western Pulp and Paper Workers, Local 10, and by maintaining a lawsuit in the United States District Court praying for an order confirming and enforcing the award of Coast Arbitrator Sam Kagel and requiring Pacific Maritime Association and its employer-members to pay money damages equal to "time-in-lieu" payments pursuant to the arbitration award, with an object of forcing or requiring Weyerhaeuser Company to assign the work described below to employees represented by Local 32, International Longshoremen's and Warehousemen's Union rather than to employees represented by Association of Western Pulp and Paper Workers, Local 10. The work consists of:

> The handling of cargo from the warehouse or last point of rest to shipside and the tying up and casting off lines of vessels at Weyerhaeuser Company's dock in Everett, Washington.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Withdraw and cease filing and attempting to enforce "time-in-lieu" claims for work performed by members of Association of Western Pulp and Paper Workers, Local 10, at Weyerhaeuser Company's dock in Everett, Washington.

(b) Post in conspicuous places in its business offices, meeting halls, and all other places where notices to members are customarily posted copies of the attached notice marked "Appendix B."[12] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and mail sufficient copies of said notice to the Regional Director for Region 19 for posting by the employer-members of Pacific Maritime Association and Weyerhaeuser Company, where notices to their employees are usually posted, if said employers are willing.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges unfair labor practices other than those specifically found herein.

[12] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

BACKGROUND:

The barge SKIPANON berthed at the Weyerhaeuser T-M facility in Everett, Washington, on January 29, 1981, and ordered a T-144 manning of six men to work aboard the barge loading lumber. The cargo of lumber had been dock-stored in advance of the barge's arrival by Weyerhaeuser Employees who regularly work at a Weyerhaeuser facility at a different location. These Weyerhaeuser Employees, members of APPWU Local 20, were also utilized by Weyerhaeuser to take the lines of the barge and to operate forklifts to move the cargo from dock storage to the barge. The ILWU Local claimed that the work of handling lines on the dock and the movement of the cargo from dock storage to the barge should be performed by ILWU Longshoremen. After disagreement by ILWU/PMA Joint Port Labor Relations Committee, the issue was referred to the Area Arbitrator, who in turn referred the matter to the Joint Coast Labor Relations Committee. The Joint Coast Labor Relations Committee heard the matter on February 25, 1981, and their disagreement on the issue is shown in the minutes of their Meeting No. 4-81 (Jt. Ex. 3), as follows:

ISSUE:

> *"Arbitrator's Referral re Jurisdiction, Weyerhaeuser Dock, Everett (PS-04-81, Local 32)*
>
> The Committee discussed Area Arbitrator's Decision No. W-01-81, which referred this dispute involving jurisdiction of work performed at the Weyerhaeuser dock facility to the CLRC. The Union's position is that the employer, Crescent City Marine Ways & Drydock Co., Inc., should have hired longshoremen to handle lines and operate forklifts to move lumber from dock storage to the barge since this is a new operation as contemplated by Sections 10.5 and 10.51 of the PCLCD.
>
> The Employers' position is that the employer does not have control of the cargo until the cargo reaches ship's tackle. The cargo was under the control of a nonmember of the Association as provided in Section 1.46 of the PCLCD.
>
> Disagreement reached.

DISCUSSION:

The record in this case shows that the T-M facility in Everett was considered an industrial dock in the past, as defined in the PCLCD; that when it was operating as an industrial dock, Weyerhaeuser Employees belonging to APPWU Local 10 would move the cargo from stowage to ship's hook or to a barge; that the T-M facility was closed down as a pulp manufacturing facility in December of 1980, and that no products have been manufactured there since.

The Union does not question the advance dock storage of the cargo. Union counsel Rubio stated (Tr. 11) as follows:

> Keep in mind that the cargo is dock-stored prior to the arrival of the barge. It is trucked in or brought in by rail. We are not questioning who dock-stores it. The point is that once the barge comes in, the movement of the cargo, under Sections 1.1 and 1.11, from the point of rest to the ship's hook is longshore work.

The Union contends that since the T-M facility is no longer an industrial dock, the past exception of assigning dock work to other than Longshoremen no longer applies to this facility; that the T-M facility should be considered as a new, commercial operation in which dock work belongs to Longshoremen; that Section 1.45 governs and supports the Union's position.

The Employers contend that the cargo comes under the control of the PMA member at ship's tackle; therefore, Section 1.11 applies and the member cannot be held responsible for the movement of the cargo from the point of stowage on the dock to the barge.

The Employers do not contend that the T-M facility is an industrial dock but do contend that as a private dock Section 1.46 of the PCLCD should be considered applicable and that the non-member's (Weyerhaeuser's) Employees should be permitted to perform the work in question. The Employers also submitted documentation as to the manner in which the regulated carrier freights the cargo on the basis of providing transportation only from ship's tackle at point of origin.

The controlling factor in this case is the fact situation of the T-M facility as it relates to Section 1.45 of the PCLCD. It was an industrial dock and had an exemption. When the manufacturing of pulp ceased in December of 1980, the status as an industrial dock ceased and it, in effect, became a commercial dock although privately owned, and it cannot now be claimed that other exceptions under the PCLCD should be applicable.

DECISION:

1. The Union's claim that the lines work and the movement of cargo from dock stowage to the barge SKIPANON at the T-M facility in Everett on January 29, 1981, should have been assigned to Longshoremen is sustained.

2. The Union's claim for time-in-lieu for the number of non-unit Employees utilized to perform such work is sustained.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to honor and comply with the Board's Decision and Determination of Dispute reported in 256 NLRB 167, by filing "time-in-lieu" claims for work performed by members of Association of Western Pulp and Paper Workers, Local 10, and by maintaining a lawsuit in the United States District Court praying for an order confirming and enforcing the award of Coast Arbitrator Sam Kagel and requiring Pacific Maritime Association and its employer-members to pay money damages equal to "time-in-lieu" payments pursuant to the arbitration award, with an object of forcing or requiring Weyerhaeuser Company to assign the work described below to employees represented by Local 32, International Longshoremen's and Warehousemen's Union rather than to employees represented by Association of Pulp and Paper Workers, Local 10. The work consists of:

> The handling of cargo from the warehouse or last point of rest to shipside and the tying up and casting off lines of vessels at Weyerhaeuser Company's docks in Everett, Washington.

WE WILL withdraw and cease filing and attempting to enforce "time-in-lieu" claims for work performed by members of Association of Western Pulp and Paper Workers, Local 10, at Weyerhaeuser Company's dock in Everett, Washington.

LOCAL 32, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION